Article II. Property

593 X 614 [764] Through marriage, a woman does not become a member of her husband's clan. If for example she is born into the Bofétola clan, she remains all her life bosí Bofétola, "member of the Bofétola clan," and her corpse has to be buried in her native soil. In case of divorce and remarriage, the new husband does not refund the bride price to the former one; he pays the woman's parents, and they reimburse the forsaken husband.

593 X 421 All the wife's activity, however, is directed toward the good of her husband and his family, and this is so from the time of the ikulí payment. Her parents have no further rights over their daughter. All the fruits of her labor are her husband's property.

If she finds objects that have no owner, such as, for example, elephant tusks or buried copper rings of which no one claims ownership, they do not belong to her nor to her family, but exclusively to her husband. If he shares with his parents-in-law, he does so out of affection and respect for them. He has no legal obligation to do so, but propriety and cordial relations impose a certain duty on him.

Profits from the sale of the products of her industry (such as foods for market, mats, salt, pots, baskets) belong not to her but to her husband.

Even whatever she acquires during a visit to her parents, everything she finds while she is with her family, the fish she catches, the caterpillars she gathers in the forest there, all that belong exclusively to her husband.

It sometimes happens that a woman infringes on the husband's rights in this respect. If he is kind he will generally let her do as she [577] pleases. Severity on his part would be attributed to a lack of affection toward his wife or a lack of delicacy toward his parents-in-law, and he would even be criticized for being stingy (never unjust!), a more serious criticism than the others from the Nkundó point of view. [263] Dishonest conduct on the part of a wife, however, may give rise to incidents, and even to serious ones. That is what happened in the historic case of Efoloko of Ikengya (Bongí li), who was married to [578] Mpokú of Imomo. She had gone fishing at home and had given all her fish

593x to her brother Bolómaóngá. Her husband did not press the point. But
●421 at a meeting where much beer was consumed, his companions teased
518 him for his excessive leniency, which they explained as a weakness on his part. Mpoká hereupon went into a rage, and the result was a bloody war between the two clans.

593x A husband is expected to provide for his wife and to set aside
421 a fair portion of profits gained for her clothes, her utensils, etc., or quite simply to give her the means to take care of her own needs and those of the house.

Thus, although the husband is the sole legitimate owner of the fruits of his wife's labor, another law requires him to give her the amount she reasonably requires for her maintenance. If the wife appropriates the profits without informing her husband in advance, her action is an infraction of the law. If the husband does not give his wife what is necessary and useful to her to the extent that he is able, his action, too, is an infraction of the law.

Fish caught by the wife are cooked, and those that remain are smoked and thus preserved for the use of the household as a whole. If a husband is not too badly disposed toward his wife, he will let her have a portion for her family.

The fields set up jointly by the couple (the man cuts the forest, the woman burns and clears the field, plants and cares for the crops) are the husband's property. The fruits of the field are used for their joint maintenance and that of their children. Profits from the sale of a portion of them are for their common use. They settle these matters between themselves as do most European families. Naturally, there are infractions in this respect also, and one spouse or the other sometimes enlarges his share for his own benefit or that of his parents, or disposes of goods without communicating his intention do so to the other in advance. [264] But all decent people disapprove of such behavior. (1)

1. There is a fable which teaches the right attitude to adopt in such situations.

583 x 421 [586] If one day the marriage is dissolved, the wife may no longer claim any right to the fields, utensils, clothing, etc. She does not inherit from her husband. When she herself dies, her family has no right to anything she may have left except, of course, to valuables she has received on the occasion of the marriage of one of her daughters. (2)

2. See Chapter II, Article V. For fuller details, see Chapter VIII, Article V, and Chapter IX, Articles IV and VII.

583 x 672 421 The woman's position with respect to property has yet another consequence; a husband is responsible for damage caused by his wife. He is the one who must pay the indemnity. The same is true for any debts she may have contracted. If she has borrowed, her creditor claims his due not from the woman nor her family, but from her husband. He alone is recognized as legally responsible, since he alone has the rights to his wife's economic activity, and profits as well as losses from it. Afterward he has the right to scold and even beat his wife for causing him this financial injury. However, an exception is made in cases where the woman's family officially acknowledges, by publicly paying a ndanga before witnesses, that she is at fault and thus frees the husband of any responsibility.

We may thus draw the following conclusions:

1) A woman is not an owner.

2) However she has the right to a reasonable amount for her various needs. This right is not a true property right (jus in re); it is a right to what is necessary for subsistence (jus ad rem).

3) Thus it is not possible for a woman's parents to inherit the goods which her husband has placed at her disposal [265].

4) A wife never acts in her own name but as her husband's agent; therefore he is legally responsible.

2: Hulstaert--413 M-5 (ca. 1930) 1938 FO32 Mongo FO32 Nkundu

Article VI. The Economic Position of a Widow

736 768 As long as her seclusion lasts, a widow continues to live with the family of her deceased husband. She supplies herself with food from the crops she has grown. The tools her husband has given her remain in her hands, and she makes use of them as soon as she can. As to the various utensils which must be destroyed, they are replaced by others lent her by the family of the deceased, for she may no longer use those which served her in her husband's lifetime.

In order to better express the magnitude of their mourning, the Nkundó often refrain [441] from using the products of the farms established by the deceased. Therefore, instead of continuing to cultivate the existing crops of manioc and vegetables, the widow prefers to seek provisions in the fields of the close relatives of the deceased. Or a man who has already chosen her may place his fields at her disposal. If neither of these sources is available and she wishes to observe the rule rigorously, she must purchase what she needs in this realm.

736 768 ● 421 As we have seen in Chapter VI, Article II, a widow has no claim to the fruits of her labors. Neither the money she has earned and which is intended for the common needs of the household, nor the crops she has set up, nor the fish she has caught, nor the caterpillars she has gathered in the forest belong to her. Everything goes to the heirs. Her property is limited to objects she may have received as her personal share in her daughter's bride price, or as some other payment belonging exclusively to the mother.

If the widow remains in the family of the deceased, however, her fields, tools, etc., are left to her, for under those conditions there is no reason to take them away from her. But if she [787] remarries elsewhere, the heirs are pitiless. A Nkundó does not want the family wealth to be scattered or squandered in any way. The law says lokutu lókísó lófótsw'ínyamó, "our patrimony can not be alienated."

736 768 In point of fact the widow is treated more favorably, at least in the best instances. If her relations with the family have been good, they will not refuse her some small object that she

601 politically, his whole society is, in fact, based on those relationships
561 which are incomprehensible to us. Indeed, the order of duty and re-
613 sponsibility, of authority and honor, are socially, legally, and politically determined by the order of birth. That order is determined by generation, and within the generation, by age: from the oldest father down the whole line of fathers to the oldest "child" in the whole row of children. The children of your older brother, even if they are younger in years, go before your own children. As we shall see later, the female members of the family, who practically fall outside this order, recover their place of honor through their sons.

613 From this short description of the paternal clan, it is immediately apparent that the clan is not a geographical concept among the K Nkundo. Wherever the daughter may marry, wherever the son may wander in service to the Whites, that person always and everywhere continues by law to belong to his wise, and he remains bound to all the rights and duties of his place in that community.

602 It also appears that clan and blood relationship do not come any-
613 where near to blanketing each other. Each "blood relationship" of the Nkundo extends itself over various paternal clans, since the blood relations of the mother, as well as the descendants of all the other women of my wise who are lawfully married out of the clan, belong to another wise.

/152/ 3. Inheritance in the Clan

613 Each clan has possessions that constitute the inheritance or patrimony
421 of the members, the domain of the family. These goods are of two kinds: economic and dotal. The former are subdivided into real property, or inalienable property, and personal property.

613 The real property of the clan consists of land and waters. The land
423 is divided into: arable land, land for gardens, and hunting areas. These constitute common property, whose cultivation or usufruct is divided among the members of the clan: each one receives his garden land and hunting ground to clear; as soon as the user leaves it, that ground is free again for the community. Palm groves, of course, also remain common property of the members. A similar arrangement applies to water rights. Larger fishing areas remain common property and are, under the leadership of the clan head, communally exploited. Smaller fishing grounds, creeks, ponds, etc., are allotted to each

613 member. In the case of common use or of an exceptionally good
423 yield (large game, a rich haul of fish, large yield from a particular cultivation of common property, such as palm beer), these are divided by the clan leader and their respective shares allotted to all members.

613 Personal property consists of the hut and the tools of the man, the
422 furniture of the woman, and the domestic animals. These are movable and can also go out of the clan through inheritance. Should they leave their husbands, married women may taken with them whatever they have received or inherited personally from their wise.

421 In contrast to the economic property of the clan, there is the dotal
613 or capital property, the marriage settlements, which do not have
583 economic, but only legal value. They represent the rights over people. In the first place we find those persons who themselves are the source of rights: the marriageable girls (bibunanyi) of the clan /A/ and the substitutes for women married into the clan /A/—that is, the women who are married into the allied clan /B/ with the acquired bride price (nkita). /Ed. Clan A pays bride price for a woman from clan B, the allied clan. Then clan B uses this acquired bride price to obtain another woman in marriage, a "substitute." This substitute is nkita to
[567] the original woman./ In addition, there are the slaves who can re-
421 place a caput. In the second place, there are the titles which represent
613 a caput: the /153/ so-called dotal securities (baumba). These dotal securities or titles are kept by the clan leader and, with the knowledge of his immediate successor, hidden somewhere in the ground. With the approval of the clan council, he may also lend them out. These dotal possessions or rights are also common property of the clan and are used to procure a wife for the clan members, each in his turn.

The common ownership of the economic property makes possible the difficult sharing of woods and river, prevents the cutting up of the property, hinders the impoverishment and the proletarization of the poor, and insures the livelihood of all of the clan members. This common ownership has nothing more to do with communism than the common ownership of property in our nuclear families.

The dotal or capital property, the bride price titles, which have perhaps aroused the most indignant and lofty compassion of our civilized world, have less to do with buying and selling the wife then our own dowry and class system. They are permanent legal titles of the contract which is made between the clans of the couple on the occasion of the marriage. Our individualistic liberalism and mercantilism have regarded these legal securities only through economic spectacles and

have seen them as money transactions. We have obtruded our point of view and destroyed the whole legal system of the natives. It is through our materialization of those securities that we have lowered the native woman to a plaything of money and a piece of merchandise.

As for the two outgrowths of the native system, divorce and polygamy, neither is inherent in the legal system as such. They are only abuses which have taken root and which clash with the principles of the native law itself. By its nature, native marriage is also indissoluble, and polygamy has only been able to exist through a popular confusion between paternal and marital law.

4. Legal Power in the Clan

In Nkundo society all individuals do not have equal rights or powers, as in the Napoleonic law books, /154/ but the natural rights concerning people are still completely recognized. All value and power comes from God, through the ancestors. Those who are nearest to God are thus the highest in position, his first representatives. There is no question of absolutism or despotism. Just as the blood is divided among all clan members in a descending line, so also are authority and legal power. They are one as a legal entity in relation to the outside world; nevertheless, each member takes part and has a vote in the internal administration of justice, so that, when clan interests are discussed and dealt with, each member may sit in the place accorded to him and take part in decisions. In a legal sense there is, therefore, no question of a separate family council, which would assist the clan leader, but all decisions are made communally.

A single exception to this does exist, namely, that which gives the head of the nuclear family legal power over his wife and children, and then only with the acknowledgment and approval of the clan. Differences between autonomous clans are settled by the clans involved, a sort of international court of law where friendly clans may also be brought in as arbiters.

Such an arrangement made the court absolutely "paternal." The whole procedure was one of a reconciliatory character, which resorted to coercive measures only when necessary, and did its utmost to save the honor and the welfare of the involved clans, and to compensate for, to restore, and to prevent further offenses.